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David B. Camp, and Beecher Lewis

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DUKE ADVANTAGE, LLC, a company,
Plaintiff,

v.

CORMATRIX CARDIOVASCULAR,
INC., a corporation, ROBERT G.
MATHENY, an individual, DAVID B.
CAMP, an individual, and BEECHER
LEWIS, an individual,
Defendants.

Case No. C072950 RMW
Santa Clara Superior
Court Case No. 107 CV085326

**[PROPOSED] ORDER GRANTING
DEFENDANTS' MOTION TO DISMISS
THE COMPLAINT FOR IMPROPER
VENUE**

Date: August 3, 2007
Time: 9:00 a.m.
Courtroom: 6
Judge: Hon. Ronald M. Whyte

The motion of defendants CorMatrix Cardiovascular, Inc. ("CorMatrix"), Robert G. Matheny, David B. Camp and Beecher Lewis to dismiss pursuant to Rule 12(b)(3) of the Federal Rules of Civil Procedure for improper venue came on regularly for hearing on August 3, 2007 in Courtroom 6 of the above-entitled Court. Having fully considered the arguments submitted in support of and in opposition to the motion, the Court finds that this is the improper venue to hear this action as to all moving defendants. A valid and binding Subscription Agreement, signed by Plaintiff contains a forum selection clause which provides that any action arising out of or relating to the Subscription Agreement and any action against CorMatrix must be brought in Georgia State Court or Delaware Federal Court.

1 IT IS THEREFORE HEREBY ORDERED THAT DEFENDANTS' MOTION IS
2 GRANTED AND THAT:

3 1. The Complaint is dismissed as to all moving defendants for improper venue.

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5 DATED: _____

THE HONORABLE RONALD M. WHYTE
UNITED STATES DISTRICT COURT JUDGE

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